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ABSTRACT

The flexibility of the Convention as the organizing instrument of the International Telecommunication Union (ITU), has allowed evolutionary changes in the composition of the organization (originally established in 1865) and has enabled it to modify its agenda so as to integrate the new demands of the Third World constituency for development assistance. This successful adjustment to the contemporary geopolitical environment is a move from the organization's past concerns of technical coordination matters to policy planning and technical assistance to the Third World. The Plenipotentiary Conference, a political event in which the representatives of member countries attempt to secure changes in the ITU's structure and functions, was an important factor in the move towards the development of a policy that has fostered the improvement of telecommunication equipment for developing countries. The more rigid institutional framework of a Charter, such as that of the United Nations, would not have allowed for the continuous process of adjustment to the changing political and technological environment that has made it possible for developing nations to increase their voice in world affairs. (Thirty-one notes are included, and two references are appended.) (MS)

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THE EVOLVING NATURE OF THE INTERNATIONAL TELECOMMUNICATION UNION: THE CONVENTION AS AGENT OF CHANGE

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ABSTRACT

Established in 1865 by a small group of European powers in an era immune from preoccupations of development assistance to the Third World, the International Telecommunication Union (ITU)--the United Nations specialized agency in charge of telecommunication matters--has successfully adjusted to the contemporary geopolitical environment shaped by the newly-independent nations' asserting their power within international forums. In contrast with the past, today the ITU is predominantly concerned with technical assistance to developing countries.

The fact that the expansion of the ITU's mandate did not lead to an institutional crisis has generated to date no intellectual curiosity. This paper explores this uncharted territory by arguing that the flexibility of a Convention, unlike the relative stability and rigidity of a Charter, may have been a significant factor in making it possible for the ITU, by allowing evolutionary changes in the composition of its organs, to modify its agenda so as to integrate the new demands of the Third World constituency for development assistance.

After a brief note contrasting the nature of Conventions and Charters, the investigation is two-fold. First, it provides an historical analysis of the successive Conventions amended by the Plenipotentiary Conferences--the supreme organ of the ITU. Second, it gives an account of the on-going debate taking place in ITU circles concerning the replacement of the Union's Convention with a Charter, a debate intimately linked with the evolving nature of the Convention.

Introduction

Like all other agencies of the United Nations system, the specialized agency in charge of telecommunication matters--the International Telecommunication Union (ITU)--has not been left unaffected by the post-World War II geopolitical redistribution of power. The growing number of newly-independent nations which joined the various international organizations in the 1960s, has changed the priorities of these organizations' agendas to the point where about 80 percent of all United Nations resources and 90 percent of its personnel are now devoted to improving human welfare of the Third World through economic and social development.[1] The ITU was called upon to assist the developing countries in the establishment of their telecommunication infrastructure.

Compared with that of other international organizations, however, the expansion of the mandate of the ITU toward addressing the specific needs of its developing constituency evolved in a unique manner worthy of investigation.

Established in 1865 by a small group of twenty European countries interested solely in coordinating the technical operations of their telegraph, and later their telephone and radiocommunication systems, the forerunner of the ITU, the International Telegraph Union was born in an era immune from preoccupations of development assistance. No such concern was reflected in the basic arrangements of the ITU, or, in particular, in its first Convention adopted when the International Telegraph Union and the International Radiotelegraph Union merged into the modern International Telecommunication Union in 1932. Unlike the ITU, the other specialized agencies were created after World War II when the process of decolonization began.[2] To those organizations, development-assistance activities were directly or indirectly enshrined in their respective Charters or Constitutions.

In view of the fact that to survive, an international organization--like a living organism--has to adapt to a changing environment, one might have expected that the ITU, because of its historical mandate, would not have survived the new geopolitical environment shaped by the newly-independent nations' asserting their power within international forums. Such was not the case, however. Not only is the ITU today the oldest international organization but, with 161 member-states, it has the greatest number of members, more indeed than the United Nations itself (for a brief description of the ITU structure, see Note 1).

In contrast with the past, today the ITU is predominantly

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[1]UN ECOSOC Doc. 6241 (1984).

[2]With the exception of the International Labour Organisation (ILO), a holdover of the 1920 League of Nations, and the Universal Postal Union (UPU), created in 1873.

concerned with technical assistance to developing countries. The Union's adjustment to the new environment shaped by the preoccupations of developing countries was initiated less than forty years ago. It is nothing short of a Copernican revolution that this 120-year-old institution, established by a small club of Western industrialized nations at a time when Third World issues were a moot question, in the 1980s is taking for granted what it refused to consider in the 1940s, namely, that the ITU is no longer solely concerned with technical coordination matters but is solidly engaged in policy planning and technical assistance to the Third World.

Although the longevity of the ITU is unique in the annals of international governmental organizations, it has rarely been the focus of scholarly attention. Some authors have suggested that the reason for the ITU's longevity has to do with the particular nature of its domain of jurisdiction--telecommunication. The protection of a nation's telecommunication system is deeply rooted in the need for collective agreements regarding the sharing of the radio frequency spectrum--a scarce natural resource.[3] Gregg argues convincingly that one of the ITU's greatest strengths, and one which distinguishes it from other international organizations, is its ability to cater to its members' self-interests. As the stake of a nation in advanced telecommunication systems increases, its willingness to prevent conflict will permeate other areas of interest to the ITU community such as accommodating the demands of developing countries.[4]

The fact, however, that of all the U.N. specialized agencies the ITU is one of only two to be equipped with a Convention, has to date generated no scholarly curiosity regarding the possible impact of an organization's basic instrument upon its structural and functional adjustment to a changing environment.[5]

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[3]See in particular, J. H. Glazer, "The Law-Making Treaties of the International Telecommunication Union through Time and Space," Michigan Law Review 60/3 (January 1962), pp. 270-316; D. Leive, The Future of the International Telecommunication Union (Leiden: A. W. Sijthoff, 1970); G. A. Codding and A. Rutkowski, The International Telecommunication Union in a Changing World (Dedham, MA: Artech House, 1982); G. D. Wallenstein, International Telecommunication Agreements (New York: Oceania Publications, Inc., 1981).

[4]D. C. Gregg, "Capitalizing on National Self-Interest: The Management of International Telecommunication Conflict by the ITU," Law and Contemporary Problems (International Telecommunications), 45/1 (Winter 1982), pp. 38-52.

[5]The other specialized agency is the Universal Postal Union. Interestingly, the only two Convention-based organizations are also the two oldest of the U.N. system.

It is worth noting that the importance of the basic instrument as organizational modifier has not been overlooked in United Nations circles. In 1975, the Group of Experts on the Structure of the United Nations System delivered the report, "A New UN Structure for Global Economic Cooperation," whose broad mandate was to find answers to the following question:

> Is it possible to inject sufficient flexibility into the Charter in order to provide room for adaptation, without at the same time making it too easy for groups of member states to upset, through the amendment procedure, the delicate balance of power that had been worked out between the large and small states?[4]

This paper will explore this uncharted territory by arguing that the flexibility of a Convention, unlike the relative stability and rigidity of a Charter, may have been a significant factor in making it possible for the ITU, by allowing evolutionary changes in the composition of its organs, to modify its agenda so as to integrate the new demands of the Third World constituency for development assistance.[7]

After a brief note contrasting the nature of Conventions and Charters, the investigation is two-fold. First, it provides an historical analysis of the successive Conventions amended by the Plenipotentiary Conferences--the supreme organ of the ITU. Second, it gives an account of the on-going debate taking place in ITU circles concerning the replacement of the Union's Convention with a Charter, a debate intimately linked with the evolving nature of the Convention.

This study is based on an examination of primary sources, namely, the ITU documents available at the organization's Central Library and Documents Section at the Geneva headquarters, where the author spent five weeks. Most relevant is the material issued by the Administrative Council and by the Plenipotentiary Conferences, complemented with interviews conducted with longtime ITU personnel involved in technical assistance in order to provide elaboration and context where needed.

About Conventions and Charters

To shed light on the unique features of the International Telecommunication Convention of the ITU, comparison is made with

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[4]For more details, see M. Hill, The United Nations System: Coordinating its Economic and Social Work (Cambridge, MA: Havard University Press, 1978). In particular, Appendix 6, "A New UN Structure for Global Cooperation--List of Conclusions and Recommendations of the Group of Experts, Prepared by the Secretariat," pp. 211-233.

the Charter of the United Nations.[8]

Both instruments state the principles of universal representation and of "one country, one vote." Both the Convention and the Charter can be revised by their supreme organs--the Plenipotentiary Conference, for the ITU, and the General Assembly, for the United Nations.

The modality for revision, however, is what differentiates fundamentally the ITU from the U.N. The ITU Convention can be amended by a simple majority, whereas modification of the U.N. Charter requires a two-thirds majority, including the five permanent members of the U.N. Security Council. Any one of the permanent members can block an amendment even though it may be ratified by all other members of the United Nations.

The veto power granted to the five permanent members has serious repercussions in the balance of power between states. The Charter maintains in eternum the five major powers (USSR, USA, Great Britain, France, China) as permanent members.

The Basic Provisions of the ITU Convention contain a clause permitting a member to withdraw from the Union through denouncing the Convention by simple notification through diplomatic channels to the Secretary-General. In contrast, no formal right of withdrawing from the organization has been given in the U.N. Charter.[9]

The ITU Convention, by "fully recognizing the sovereign right of each nation to regulate its communications," is actually non-binding, as it allows for Reservations to its Final Protocol.[10]

The provision for Reservations is a unique feature that distinguishes the ITU Convention from the U.N. Charter, in which no reservation can be made with regard to the fundamental provisions concerning the purpose of the Charter. Consequently,

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[8]Information on the ITU Convention is borrowed from Codding and Rutkowski, op. cit., Chapter 9 "Basic Arrangements," pp. 203-222. Discussion of the UN Charter relies on M. Waters (ed.), The United Nations: International Organization and Administration (New York: The MacMillan Company, 1967) and M. Hill, The United Nations System: Coordinating Its Economic and Social Work (Cambridge: Cambridge University Press, 1978).

[9]Although by stating that "coercion will not be brought to bear on a member wishing to withdraw," the Charter implies a recognition of the right to withdraw at one's own discretion.

[10]The standard formula states: "The delegation of _____ reserves for its government the right: 1) not to accept any financial measure which might lead to an increase in its contributory share in defraying Union expenses; 2) to take any action it deems necessary to protect its telecommunication services should any member fail to observe the terms of the International telecommunication Convention."

when a member does not honor a U.N. Charter provision, it finds itself in breach of contract by negating the "principle of the binding force of agreements," a situation which may possibly lead to a institutional crisis. Through a blend of obligatory requirements and convenient escape clauses, the ITU Convention does not allow this situation to occur.

Another basic difference between the ITU Convention and the U.N. Charter relates to the financing mechanisms. ITU members are free to choose any class of contribution to defray the Union's budget, though a Resolution invites members to select a class of contribution "most in keeping with their economic resources."

The U.N. contributory system is supervised by an 18-member Committee on Contributions, which assesses each country's contribution on a pro-rata basis according to a formula that adjusts national income (using a 10-year average) upward or downward according to per-capita income but with the provision that no contributor shall pay less than .01 percent or more than 25 percent of the total.[11] This financing scheme gives undue influence to the major powers. The top 10 contributors to the current U.N. budget account for nearly 78 percent of the total. They account for less than 50 percent of the ITU budget.

The Plenipotentiary and the Evolving Convention

The authority of the Plenipotentiary Conference stems from the fact that it, and it alone, has the power to amend the International Telecommunication Convention. The Convention gives the ITU its legal authority, establishes its structure, and defines its functions and work program (for discussion of the ITU Convention as it relates to the international telecommunication law, see note 2).

The Plenipotentiary is a political event in which the representatives of member countries attempt to secure changes in the ITU's structure and functions that will give them some appreciable advantage. It follows that the dynamics at work at Plenipotentiaries have a direct impact on the ITU as a whole. Because of the unique amendment procedure, each Plenipotentiary Conference has altered the Union's Convention to reflect the balance of forces at the time.

Concentrating on the basic principles which shape the Union, its objectives, governing bodies and essential activities in the field of development assistance, the following discussion considers the succession of changes and the more significant

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[11]Until the 1970s the U.S. paid considerably more. In 1946, it contributed nearly 40 percent of the UN regular budget. In 1970, after a series of gradual decrease, had lowered the U.S. contribution to 31.5 percent, a Commission recommended a reduction to a level not to exceed 25 percent.

innovations that have emerged.[12]

The preamble of the first Convention, signed in Madrid in 1932, described the Convention as a treaty between States, affirming that "the Plenipotentiaries of the Governments named above, being assembled in conference in Madrid, have, by common consent and subject to ratification, concluded the following Convention." The 1947 Plenipotentiary, held in Atlantic City, amended the Convention to expressly recognize "the sovereign right of each country to regulate its telecommunication" and specified that the purpose of the Convention was to ensure "the effectiveness of telecommunication." The 1952 Buenos Aires meeting added to the Convention the objective of "facilitating relations between the peoples" by means of telecommunications. The next significant change was made thirty years later when the Nairobi conference of 1982 modified the preamble to recognize "the growing importance of telecommunication for the preservation of peace and the social and economic development of all countries," and included "facilitating...economic and social development among peoples" as one of the purposes of efficient telecommunication services.

The expansion of the mandate of the ITU toward addressing the concerns of the Third World is most visible in the successive alterations of the stated "Purposes" of the ITU. The "Purposes of the Union," (Article 3, later to become Article 4) appeared for the first time in the 1947 Convention, where they were defined as follows:

> 1) to maintain and extend international cooperation for the improvement and rational use of telecommunication of all kinds;
>
> 2) to promote the development of technical facilities and their most efficient operation with a view to improving the efficiency of telecommunication services, increasing their usefulness and making them, so far as possible, generally available to the public;
>
> 3) to harmonize the actions of nations in the attainment of those common ends.

The second part of the article listed the "Activities," the means of achieving those ends, and required the Union to:

> 1) allocate the radio-frequency spectrum and register radio frequency assignments in such a manner as to

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[12]For the sake of clarity, the following is the chronology of the Plenipotentiary Conferences: 1932 (Madrid); 1947 (Atlantic City); 1952 (Buenos Aires); 1959 (Geneva); 1965 (Montreux); 1973 (Malaga-Torremolinos); 1982 (Nairobi).

avoid harmful interference between radio stations in different countries;

2) establish rates for the use of telecommunication services as low as possible consistent with sound administrative practices;

3) promote the adoption of measures to insure the safety of life;

4) undertake studies, formulate recommendations, and collect and publish information on telecommunication matters for the benefit of all members and associate members.

The activities to be undertaken to meet the objectives were amended and were specified in all subsequent Conventions. The 1959 Convention required the Union

> to foster the creation, development and improvement of telecommunication equipment and networks in new or developing countries by every means at its disposal, especially its participation in the appropriate programs of the United Nations.

The importance of this provision lies in the fact that, for the first time in its history, the ITU was instructed specifically to assist developing countries. According to ITU historian Codding, this decision, "considered to be of special benefit to the new members, appeared to be more a gift from the Western-dominated majority rather than a victory won by the Third World."[13] The 1973 Plenipotentiary Conference, held in Malaga-Torremolinos added a clause to the Convention which instructed the Union to "coordinate efforts with a view to harmonizing the development of telecommunications facilities, notably those using space techniques." Notwithstanding heavy criticism from Eastern and Western industrialized nations, the developing-nations constituency succeeded in modifying Article 4 of the 1982 Convention so as to promote technical assistance from "Activity" to "Purpose" (one of the three) of the Union, namely, "to promote and to offer technical assistance to developing countries in the field of telecommunications." Furthermore, this Convention stipulates that to achieve that objective the Union should "foster international cooperation in the delivery of technical assistance to the developing countries." The decision potentially

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[13]George A. Codding, "The New Nations and the International Telecommunication Union: Some Policy Implications for the Future," in H. S. Dordick (ed.) Proceedings of the Sixth Annual Telecommunications Policy Research Conference (Lexington, MA: Lexington Books, 1978), p. 362.

cleared the way for using the regular budget to cover expenses incurred in the implementation of technical cooperation.

On the subject of representation in the various ITU organs, since the Government of the Swiss Confederation was responsible for the organization of the Bureau of the Union (the forerunner of the permanent Secretariat-General established by the 1947 Convention), the 1932 Convention contained no provision concerning the status of Union staff. The article, "Elected Officials and Staff of the Union," was introduced in the 1965 Convention. It specified that elected officials "shall all be nationals of different countries, Members of the Union" and emphasized that staff should be recruited "on as wide a geographical basis as possible." The application of this article created problems.

The developed countries, though sympathetic to the need for fair geographical representation, have always insisted upon the criterion of technical expertise of the potential candidates for posts, whereas the developing countries, though recognizing the importance of technical and administrative competence, have continuously emphasized the criterion of geographical representation. This conflict illustrates the differing perceptions between the developed countries, which see the ITU purely as a technical agency, and the developing countries, which look at it as a policy-making body.

Also, the 1959 Convention was amended so that the Secretary-General and his Assistant (later Deputy), until then elected by the Administrative Council, were chosen by the Plenipotentiary Conference. This amendment was opposed by the Western industrialized countries, which feared that an aspiring candidate to the ITU's helm, by trying to appeal to the larger constituency of the Plenipotentiary, might develop a power base of its own and ultimately "escape" from the control of the major industrialized nations which dominated the Administrative Council.

The current situation is one where the high-level positions in the different organs of the ITU are generally occupied by officials from the European countries and the USA, and the low-level positions held by representatives from developing countries. Whatever the provisions of the Convention to that effect, it is very difficult for delegates of a Third World nation to be promoted to a position previously occupied by somebody from the industrialized world.[14]

The Administrative Council was established at the 1947 Atlantic City Plenipotentiary Conference. It was composed of eighteen members who, according to the Convention, "would be elected by the Plenipotentiary Conference with due respect to the need for equitable representation of all parts of the world." The Council was to meet annually to take charge of the administration

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[14]See "List of Permanent and Temporary Posts With Incumbents at 15 May 1985," International Telecommunication Union, Geneva. The problems of promotion was mentioned in an interview with an ITU delegate who requested anonymity.

of the Union between Plenipotentiary Conferences.

The Administrative Council became the most powerful policy-making body of the ITU since it sets most of the work program of the Plenipotentiaries. To gain control of it means to shape to a large extent the destiny of the Union. The fight over an increase of the Administrative Council membership has been on the agenda of all Plenipotentiary Conferences as recorded in the successive Conventions.

The increase in the Council's membership, from 25 in 1959 to 41 in 1982 (with developing countries representing the majority), illustrates the flexibility of a Convention to modify the ITU organs with the consequence of responding rapidly to the changing environment by integrating the new demands of the Third World. The 1959 Convention instructed the Council "to promote international cooperation, especially through Union participation in the appropriate programs of the United Nations." The 1982 Convention requires that the Council "shall determine each year the policy of technical assistance."

The electoral power of the Plenipotentiary Conference was further broadened by the 1973 Convention to include the members of the International Frequency Registration Board. The IFRB, established in 1947, came to assume great importance to the developing countries as they experience difficulties in selecting radio frequencies appropriate to the operation of their radio-communication systems, as well as securing access to the geostationary orbit.[15] The 1982 Convention instructs the IFRB to take account of "the needs of members requiring assistance, the specific needs of developing countries, as well as the special geographical situation of particular countries."

Since 1965, the workload of the various committees on changes to the Convention has been dominated by the attempt by newer members of the ITU to eliminate practices which they considered gave special privileges to certain of the older developed countries. The decision to elect the Directors of the International Radio Consultative Committee (CCIR) and the International Telegraph and Telephone Consultative Committee (CCITT), enshrined in the 1982 Convention, is a case in point.

This move was considered dangerous by some delegations from developed countries who feared that the Directors would be elected on the basis of political rather than technical strength, and that developing countries would "politicize" those Committees by introducing matters thought to be irrelevant to telecommunication, namely, development-assistance activities.

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[15]The geostationary orbit, 22,300 miles above the Equator, is the only orbit on which a single satellite can provide terrestrial locations with 24-hour communication services. With the ability to accommodate only a limited number of satellites, this orbit is thus a scarce resource.

Toward a Charter

The structural and functional status quo usually protects the interests of the dominant group. The Third World had engineered a process aimed at altering fundamentally what was perceived by the industrialized countries to be the historical purpose of the Union, in which technical assistance to developing countries was only incidental. In order to slow down and possibly bring this process to an halt, the industrialized countries have been attempting to change the ITU's basic instrument into a Charter, which is believed to bring organizational stability by making its subjection to amendment more difficult.

The first thought given to a complete redraft of the International Telecommunication Convention emerged in a proposal by Paraguay submitted to the 1959 Geneva Plenipotentiary Conference. The Conference passed Resolution 39 instructing the Administrative Council to study it and make recommendations to the next Plenipotentiary Conference (Montreux 1965). At its 1960 meeting, the Council realized that the Paraguayan proposal did not advocate simply a redraft of the Convention, but the preparation of a completely new Charter.[16]

At the 1965 Plenipotentiary, Japan made a proposal "Suggestion for establishment of an ITU Constitution." From then on, Japan became a leader in calling for a Constitution. The reasons for the perceived need to move away from the present Convention had little to do with the arguments put forth later by a number of developed countries, namely, the lack of stability of the Union's basic instrument and the inconvenience of having each Plenipotentiary Conference ratify after long debates a revised version of the Convention. Japan's arguments were of a purely legalistic and financial nature:

> 1) The present Convention guarantees non-ratifying countries the membership in the Union by granting to a signatory government, the rights conferred on Members of the Union, for a period of two years from the date of its entry into force, even though it may not have deposited an instrument of ratification.
>
> 2) The Members of the Union under the regime of the Buenos Aires Convention of 1952, which have not ratified the Geneva Convention nor acceded thereto, actually share in defraying the expenses of the Union. How can this fact be legally explained?[17]

At the same Plenipotentiary, Argentina proposed the transformation of the Convention into a Charter invoking arguments

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[16]See doc. 2499/CA15

[17]Doc. 19, PC 1965

which are still those of today's proponents for a change, namely, for the ITU to be in line with all other UN specialized agencies, and to provide the Union with an instrument that does not require constant revision owing to the increasing number of countries joining the ITU. The proposal called for "the elevation to a Constitution which can only be amended with the approval of two-thirds of the Members."[16] Committee 9 (Editorial Committee) resolved to set up a Group of Experts with instructions to prepare a Constitutional Charter for the ITU. The Soviet delegation suggested that the discussion be deferred until the Committee had studied all the proposals for amending the existing Convention, stating that the existing Convention has proved its effectiveness, and that there were no data to decide whether a new Charter would be superior to the Convention. Cuba contended that it might be a difficult matter to accept a permanent Constitution which must also remain democratic in character. Committee 9, however, voted in favor of replacing the Convention by a Charter by 51 votes to 40, with 9 abstentions. It was then the turn of the Plenary Assembly to vote Resolution 35 instructing the Administrative Council to set up a Study Group with the following term of reference:

> to prepare a draft Constitutional Charter and General Regulations for the International Telecommunication Union, based upon the decisions taken by, and the discussions which took place at the Plenipotentiary Conference (Montreux, 1965), the Convention and the experience of the Union, the Constitutions and the experience of other specialized agencies of the United nations, and the comments, suggestions, and proposals submitted by Member countries.[17]

A special study group was created which worked from December 1967 to March 1969, to carry out the 1965 Montreux mandate. In early 1970s, however, the developing countries were in the majority, and had second thoughts on giving a minority substantive veto rights concerning any fundamental changes in the structure of functions of the ITU. As a result, although it accepted the breakdown between the various provisions as suggested by the working group, the 1973 Plenipotentiary conference refused to give the basic provisions the title "Constitution," and decided to postpone any decision on whether to raise the majority needed to modify them until the next Plenipotentiary.

In the meantime, at the 1971 Administrative Council session, Mr. E. Sawkins from the Australian Post Office presented an influential document on the future of the ITU. It was severe regarding the possibility for the Union to adapt to the changing

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[16]Doc. 91, PC 1965

[17]Doc. 394/PC 1965.

telecommunication environment. Strengths were noted. They included: a) the spirit of international cooperation which is based on the tradition of consensus; b) the empirical base of the Union's work, rooted in tried and proved practices rather than on speculative theory; c) commercial and political impartiality illustrated by the fact that the Union's recommendations, though not mandatory, have great persuasive effect; and d) cross-fertilization of ideas through international consultation in which the private sector participates.[20]

The document, however, gave greater emphasis to the weaknesses in the operation and effectiveness of the Union: a) the most damaging weakness is that the Union operates too slowly as a result of the unanimity rule; b) the Union follows rather than lead--other organizations take up break-throughs in technology and tend to bypass or supersede the Union by the rapidity with which they exploit the new techniques in world communications; c) current administration and working methods materially contribute to its slowness in operation--perhaps too much insistence on control by members has led the Union into too much rigidity and not enough delegation of authority from Plenipotentiary Conferences to the Administrative Council; d) the Union is unable to adapt its institutional structure quickly enough to meet a changing world environment and workload, which leads to a failure to meet the challenging need of a rapidly developing world; and e) technical assistance is too often uncoordinated with financial organizations to rationalize overall effort and avoid duplication.[21]

Although the document did not call specifically for the drafting of a new Charter, it suggested a basic restructuring. In its response to the document, the United State delegation challenged Sawkins's harsh criticism of the Union, underlining that, notwithstanding its shortcomings, the ITU had been effective to date in adapting to change and in facilitating the growth in telecommunication activities throughout the world.[22]

At that time, as a matter of fact, of all the industrialized countries the United States was least convinced of the need to equip the ITU with a permanent Charter. A 1972 U.S. proposal for the work of the 1973 Plenipotentiary Conference seemed to echo (although for different reasons) the position that the new, developing countries will later adopt in their opposition to a Charter:

> The United States consider that the Union's present structure is well suited to carry out its purposes of maintaining international cooperation and promoting

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[20]Doc. 4178/CA26 (1971), Annex, pp. 8-9.

[21]Ibid., pp. 13-14.

[22]Doc. 4264/CA27 (1972)

technological development in international telecommunications. This structure has evolved during one hundred eight years of successful operation and should not be hastily altered. We therefore propose only minor refinements to correct what we deem to be deficiencies in the Union's workings. [...] Whether to fix the Union's structure on a permanent basis at a time when the volume of international telecommunications is rapidly expanding, the technology undergoing fundamental change, and new institutional arrangements evolving should be carefully considered.[23]

This statement reflected the predominent status of the United States in the work of the ITU. Its leadership was not yet challenged by the numerous African countries that were joining the organization. The United States with the other industrialized countries was still dominant in the organs of the ITU. Many Latin American countries were evolving in the sphere of influence of the U.S.. The structural and organizational arrangements of the ITU met the needs of the U.S., be it in radio-frequency allocations or in the establishment of technical standards. The call for development assistance was not yet fully articulated by the Third World, and therefore was not considered as a disturbing element. The United States had no strong reasons for altering a status quo that has enabled it to maintain an uncontested leadership in the organization. This situation will later change when the United States will no longer be in a position to influence as much the work of the Union, owing to its minority status along with its Western European counterparts.

As the U.S. interest in keeping the existing Convention faded, the developing countries took over the fight, but with very different arguments. For them, the flexible character of the present Convention would enable the ITU to be more responsive to their needs and concerns by allowing for continuous revision in the purposes and work program of the Union in such a way as to reflect more quickly the new demands. The flexibility of this contractual arrangement allowed for an ever-increasing representation of the Third World countries in the organs of the ITU. Commanding a majority in the Plenary Assemblies, they were better able to set the agenda of the organization. A Constitution requiring a two-thirds (or any other more restrictive formula) would not have allowed them to shape the work program of the Union.

India, though supporting the present Convention on the ground that it enables the ITU to adapt to the advancing technology, was of the view that whether the Union continues with its Convention or adopts a Constitution, the basic instrument should be subject to amendment by simple majority in the Plenipotentiary

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[23]Doc. 22, PC 1973.

Conference, as is currently practiced.[24]

It is worth quoting at some length the statement the Secretary-General Mili made at the Plenary meeting of the 1973 Plenipotentiary. It includes all the arguments put forth since by the Third World constituency opposing the move toward a permanent Charter:

> If we want the ITU to retain its youthful character despite its advanced age, it is essential that its fundamental instrument should be revised and amended regularly to allow mainly for two new factors:
>
> 1) the large-scale advent of the developing countries to the international arena. In the past ten year, the ITU has been enriched by the accession by a large number of new Members. To provide the necessary assistance to these new Members, our organization is developing apace. This is therefore not the time to fix a rigid pattern by means of a permanent basic text, when this evolution has not yet run its course. I am convinced that the period of five or six years to come will entail adjustment which will have to be made to the Convention at the next Plenipotentiary Conference. I am also certain that this development will persist for a long time to come, at least until the developing countries have reached the level of the industrially developed countries. You will agree with me that this is not for tomorrow. In short, it is in the interest of the developing countries, for the time being, not to have a permanent instrument for the union.
> 2) the explosion in telecommunication media. Over the past ten years, telecommunication satellites and high-capacity coaxial cables have revolutionized telecommunication media. This revolution is still in its infancy and it is essential that the ITU's basic Act should be able to match these development. Since these new media concern mainly the industrially developed countries, it is not in their interests either, that the Union should be equipped with a permanent instrument.[25]

To the concerns expressed by Japan over the ratification procedure, Mili responds that the signing of the Convention by the Plenipotentiaries already committed governments, the ratification by parliaments (or by other appropriate bodies) being only a pure formality. No country has yet refused to ratify any ITU Convention. The same may not apply to a permanent Constitution.

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[24]Doc. 64/PC 1973.

[25]Doc. 152, PC 1973, pp. 2-3

If so the ITU would thus run the risk of being faced with an institutional void that would have serious consequences. To those who hold that one advantage of a Constitution is that it would be unnecessary to revise it in its entirety at each Plenipotentiary Conference, Mili replies that neither is it necessary to revise the Convention in its entirety. Finally, the Secretary-General commends the work of the Charter Study Group, "provided that we maintain the term 'Convention' for the new instrument and that we do not require a two-thirds majority for its revision."[26]

The delegate from Brazil, an active proponent of a Charter, was unhappy with Mili's statements. He was echoed by the Argentinian delegate who had been "surprised and hurt by the unexpectedly aggressive tone of some of the expressions used." But Italy as well as Saudi Arabia supported the Secretary-General's position. For many, the difference between a Convention and a Constitution was more semantic than substantial. The stumbling block was the amendment clause of the two-thirds majority.

The 1982 Plenipotentiary Conference at Nairobi witnessed a resurgence of activity regarding the draft of a Charter, with a greater polarization in the positions of the respective delegations. Participation to the Conference was at an all-time high. Details of the Convention were the subject of lengthy discussion and the resulting pace of deliberation was too slow for many industrialized countries, which did not conceal their dissatisfaction. An increasing number of those delegations underlined the fact that had the ITU adopted a permanent Charter, it would have sped up proceedings. This attitude was most evident in Committee 8 (Rights and Obligations). Japan resubmitted the proposal it presented 17 years ago. Most of the Western European countries actively supported the establishment of a Charter.[27] The Committee submitted to the Plenary assembly a proposal "Basic Instrument of the Union," instructing the Administrative Council to draft the text of a Constitution to be presented at its 1983 session. The Plenipotentiary passed the Resolution and set up a Group of Experts.[28] As part of a bargaining process, developing countries did not oppose it. They had been successful in other fronts: the Assembly had modified the purpose of the Union stating technical assistance as one of its three objectives; ITU funding for development activities had gained momentum; and Great Britain, the United States, Japan, and West Germany introduced two Resolutions establishing the Special Voluntary Program and the Independent Commission for World Wide Telecommunications Development (Maitland Commission).

The successive sessions of the Administrative Council devoted most of their work at the study of the voluntary program

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[26]Ibid., p. 5.

[27]Doc. 266, PC 1982.

[28]Doc. DT/58/PC 1982.

for technical cooperation. The Maitland Commission submitted its Report in 1985, and the result of the Group of Experts on the draft of a Constitution is expected for the 1989 Plenipotentiary Conference.

Some "newly-industrialized" countries, particularly in Asia, had started to join the rank of the Western industrialized countries. An increasing number of delegations from developing countries came to realize that, in view of the all-time high membership in ITU and the overwhelming workload that the last Plenipotentiary Conference had to deal with, the effectiveness of the Convention may have reached the point of diminishing returns. The basic instrument which has served developing countries well over the last 30 years may begin to disserve them by slowing down decision-making processes to a point of paralysis, a situation benefiting nobody.

Conclusion

The analysis has documented the extent to which the nature of the basic instrument of the ITU has enabled the organization to adapt to its changing environment. To a large degree, the ITU's behavior conforms to the principle of "congruity" according to which a group's attitude is in some state of equilibrium with its environment. If and when some of the environmental elements are altered, an inconsistency is introduced into the prevailing structure.[29] In other words, the structural and organizational dynamics of the ITU seems to obey the principle articulated by the 19th century French chemist Le Chatelier which states that if a system in equilibrium is subjected to a constraint whereby the equilibrium is modified, change takes place, if possible, which practically annuls the constraint.

By allowing for constant modification, the ITU's Convention tends to reflect the preoccupations, needs, and demands of the majority of the organization's constituency. But the majority, as is true in all world bodies, has shifted from the industrialized countries to the developing countries during the late 1960s.[30] The powerful Western European industrialized nations, which in the late nineteenth century created an organization responsive to their needs, had to cohabit in the first half of the twentieth

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[29]Percy H. Tannenbaum, "The Congruity Principle: Retrospective Reflections and Recent Research," in R. P. Abelson et al. (eds.) Theories of Cognitive Consistency (Chicago: Rand McNally and Company, 1968), pp. 57-75.

[30]There are exceptions. The OECD, whose membership is restricted to the developed countries, has obviously not been affected by this shift. The OECD was an outgrowth of efforts by the United States to help rebuild Western European economies after World War II and to promote economic cooperation among the industrialized democracies.

century with their Eastern European counterparts whose political agenda was different.

During these years, the emerging nations born in the wake of decolonization tried unsuccessfully to direct the attention of the ITU toward their specific "under-developed" situation (the terminology used at the time). At the end of the 1960s and early 1970s, the balance of power within the Union shifted in favor of the developing countries, which attained a majority status. It was then the turn of the developed countries, both Eastern and Western, to be on the defensive, and relentlessly fight the proposed amendments to the Convention aimed at changing the initial purpose of the ITU. But to a great extent, the developing countries had achieved much of their original agenda.

In its essence, the ITU Convention is a more flexible instrument than the U.N. Charter as it allows for a continuous process of adjustment to the changing political and technological environment. Development-assistance issues, which under the more rigid institutional framework of a Charter might have severely shaken the structure of an organization historically unprepared to tackle them, at the ITU have been addressed through an on-going modification of the organization's purposes and organs.

Notes

1. The ITU is composed of four permanent organs, the Secretariat, the International Telegraph and Telephone Consultative Committee (CCITT), the International Radio Consultative Committee (CCIR), and the International Frequency Registration Board (IFRB). In addition, the Union's functions are carried out by three non-permanent organs, the Plenipotentiary Conferences, Administrative Conferences, and the Administrative Council,[31]

The General Secretariat is the chief executive and legal representative of the ITU, responsible for carrying out orders of the Administrative Council and managing the ITU's permanent staff. It ensures, among other tasks, the application of the financial and administrative regulations, prepares and submits future work plans, and prepares cost-benefit analyses of the work of the headquarters for the Administrative Council.

The CCIR has the duties of studying technical and operating questions relating specifically to radiocommunication without limits of frequency range and to issue recommendations on them.

The CCITT has the duties of examining problems regarding telegraph and telephone as well as studying tariff questions. Both Consultative Committees are close to being international

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[31]For a detailed presentation of the ITU's structure, see Codding and Rutkowski, op. cit., Chapter II, "Decision-Making Structure," pp. 59-182.

organizations in their own rights

The IFRB is made up of five persons considered the "custodians of a public trusts." Its essential duties are "to effect an orderly recording of frequency assignments made by the different countries and of the positions assigned by them to their geostationary satellites in accordance with the procedures prescribed in the Radio Regulations."

The Plenipotentiary Conference is the supreme organ of the ITU. It has the exclusive power to amend the basic treaty, the International Telecommunication Convention. It meets every five to nine years at a place decided upon by the preceeding conference.

The Administrative Conferences are of two types, world and regional. World Administrative Conferences can take up any telecommunications question of a worldwide character including the partial or complete revision of the Radio, Telegraph, and Telephone Regulations. It also reviews the activities of the IFRB. Regional Administrative Conferences must deal only with specific telecommunication questions of a regional nature.

The Administrative Council is the governing board of the ITU and the agent of the ITU Plenipotentiary Conference in the relatively long intervals between meetings of that body. It meets every year. The Council's major areas of concern are ensuring the efficient coordination of the work of the Union, taking steps to facilitate the implementation of the Convention, Regulations and decisions of the various ITU conferences, and determining the ITU's policy of technical assistance.

2. The international telecommunication law currently in force was established under the auspices of the ITU. It forms part of the existing public international Law, the main instrument being the Convention itself with the Administrative Regulations regarded as annexed to this Convention. The provisions of the Convention are contained in the "Basic Provisions" which provide the institutional framework regarding the law and regulation-making process through treaty conferences. It should be noted that the provisions of the Convention concern and govern the field of international telecommunications as distinct from national ones, for which the sovereign right of each country to regulate its telecommunication is fully recognized. Those provisions are supplemented by the "Administrative Regulations," which regulate the use of telecommunication and are binding on all members. These Administrative Regulations consist of the Telegraph, Telephone, and Radio Regulations. As far as the hierarchy of norms is concerned, the provisions of the Convention represent the first and highest category of norms; in case of inconsistency between a provision of the Convention and a provision of the Administrative Regulations, the Convention prevails (see Preamble and Article 1 of the "Agreement between the United Nations and the International Telecommunication Union," forming Annex 3 to the Convention, as well as Articles 39 and 43 of the Convention).